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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/213,544 12/17/98 NARDI

J EVE01-P-565-

EXAMINER

IM22/0410

EVEREADY BATTERY COMPANY, INC.
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CHANEY, C

ART UNIT

PAPER NUMBER

1745

DATE MAILED:

04/10/01

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 13

Application Number: 09/213,544
Filing Date: December 17, 1998
Appellant(s): NARDI, JOHN C.

MAILED

APR 10 2001

GROUP 1700

Kevin T. Grzelak
For Appellant

EXAMINER'S ANSWER

MAILED

APR 10 2001

GROUP 1700

This is in response to appellant's brief on appeal filed January 16, 2001.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-13 and 15-21 stand or fall together

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,482,798

Mototani et al.

1-1996

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mototani et al. (US Patent 5,482,798) Applicant's invention is essentially directed to alkaline batteries with cathodes containing manganese dioxide and expanded graphite. Mototani et al. disclose alkaline manganese batteries containing manganese dioxide and expanded graphite. (Note column 3, lines 40-52.)

The disclosure of Mototani et al. differs from applicant's independent claim in that Mototani et al. do not disclose kerosene absorption values. Additionally, with regards to the instant dependent claims, Mototani et al. do not disclose surface areas or densities of expanded carbon particles used, and do not disclose the identical expanded graphite particle size ranges and distributions claimed by the appellant.

It is noted that both Mototani et al. and the appellant form expanded graphite by introducing sulfuric acid into graphite and then rapidly heating the graphite to about 1000°C. (Compare Mototani et al., column 3, lines 44-50 and applicants' specification, page 8, line 8-page 9, line 10.) Because the processes for forming expanded graphite disclosed by the appellants and the prior art are similar, the materials produced will be similar, and thus have similar physical properties, including kerosene absorption values.

(11) Response to Argument

Appellant characterizes his inventive expanded graphite by its kerosene absorption value and argues the prior art of Mototani et al. does not necessarily disclose expanded graphites with kerosene absorption values within the claimed range. However, the prior art of Mototani et al. teaches expanded graphites may be formed

from a variety of graphitic starting materials including artificial graphite, naturally occurring graphite and flaky graphite. (Note Mototani et al., column 5, line 24-column 6, line 3.) Appellant has failed to show distinctions between the expanded graphites disclosed by Mototani et al. and those of the instant invention. Appellant has shown commercially available expanded graphites with kerosene absorption values outside the instant claimed ranges can be obtained. However, this fails to establish kerosene absorption values for the expanded graphites disclosed by Mototani et al. The processes by which the commercially available expanded graphites are formed are not known, and therefore parameters of the commercially available graphite and the expanded graphites disclosed by Mototani et al. cannot be related. Thus, appellants' declaration does not establish parameters of the expanded graphites disclosed by Mototani et al. The record fails to show any distinctions between the expanded graphites disclosed by Mototani et al. and the appellants' expanded graphites. Appellant's claims are not distinguished from the prior art of Mototani et al.

For the above reasons, it is believed that the rejections should be sustained.

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Art Unit: 1745

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Respectfully submitted,



Carol Chaney
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cc
April 9, 2001

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